

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

DAVID E. MACK  
*Plaintiff,*

vs

ACCOUNT DISCOVERY  
SYSTEMS, LLC  
*Defendant.*

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Case No 4:16-cv-00373

**FILED**

SEP 28 2016

Clerk, U.S. District Court  
Texas Eastern

**RESPONSE TO ORDER DENYING MOTION TO COMPEL**

NOW COMES the Plaintiff, David E. Mack, with his response to the Order of the Court [34-1] denying his Motion to Compel because he failed to follow the Court's procedure before filing his motion.

Plaintiff did, in fact, follow the procedures of the Court as stated in the Scheduling Order [Doc. 12]. Plaintiff was well aware of the procedures in the Scheduling order and makes every effort to follow court procedures. Not knowing the phone number for the Court's Chambers Plaintiff called Karen Sessions, who is the pro se clerk handling his cases, and inquired as to the phone number and person to contact at Chambers. Ms. Sessions provided that information and Plaintiff called Chambers and left a detailed voicemail as to the situation, case number and other pertinent information regarding the discovery dispute and requested a call back. The following day Plaintiff received a call from Ms. Sessions indicating she had talked with Chambers and that he should proceed to file his motion to compel. Plaintiff never received a call back directly from Chambers. Plaintiff then followed through as instructed by Ms. Sessions and filed his Motion to Compel with the Court.

Upon receiving a copy of the Order denying his Motion to Compel because he failed to follow procedures on September 23, 2016 Plaintiff immediately called Ms. Sessions as it was obvious there was an error in denying his motion. Ms. Sessions contacted Chambers on September 23, 2016 in an effort to correct the error and spoke with someone who indicated that the issue should be able to be resolved. To date (5 days later) there is no correction of the error on the docket. Plaintiff is prejudiced by this error and asks the Court to correct the record rather than leave an erroneous order on the docket reflecting negatively upon him when he did in fact follow procedures.

This case was settled on September 27, 2016 and Plaintiff is filing a Notice of Settlement with the Court according to the rules. Plaintiff will file a Motion to Dismiss with Prejudice when all settlement matters have been completed which should be approximately 15 days but it is still incumbent on the Court to correct the record on the Motion to Compel.

WHEREFORE, Plaintiff respectfully requests that the Court correct and reverse the error in the Order denying his Motion to Compel.

Respectfully Submitted,

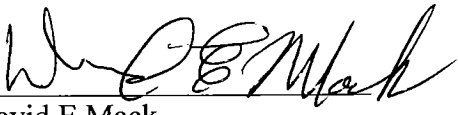
A handwritten signature in black ink, appearing to read "David E. Mack", written over a horizontal line.

David E Mack  
7720 McCallum Blvd. # 2099  
Dallas, Texas 75252  
972-735-9642

**CERTIFICATE OF SERVICE**

This is to certify a true and correct copy of the foregoing document was sent to the below named party by first class USPS mail.

Dated: September 28, 2016

  
David E Mack

Brendan H. Little  
LIPPES MATHIAS WEXLER  
FRIEDMAN LLP  
50 Fountain Plaza, Suite 1700  
Buffalo, NY 14202